



[4337-15-P]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 48**

[Docket ID: BIA-2014-0007 / 167 A2100DD / AAKC001030 / A0A501010.999900]

**RIN 1076-AF14**

**Use of Bureau-Operated Schools by Third Parties under Lease Agreements and Fundraising Activity by Bureau-Operated School Personnel**

**AGENCY:** Bureau of Indian Education, Interior.

**ACTION:** Proposed rule.

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**SUMMARY:** Congress authorized the Director of the Bureau of Indian Education (BIE) to enter into agreements with third parties to lease the land or facilities of a Bureau-operated school in exchange for funding that benefits the school. This proposed rule establishes standards for the appropriate use of lands and facilities under a lease agreement, provisions for establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a school, accountability standards to ensure ethical conduct, and provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use.

**DATES:** Please submit written comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. See the **SUPPLEMENTARY INFORMATION** section of this notice for dates of Tribal consultation sessions.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. The proposed rule is listed under the agency name “Bureau of Indian Affairs” and has been assigned Docket ID: BIA-2014-0007. If you would like to submit comments through the Federal e-Rulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and follow the instructions.

- Email: [bieleasing@bia.gov](mailto:bieleasing@bia.gov). Include the number 1076-AF14 in the subject line of the message.

- Mail or hand-delivery: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street, NW, MS 3642, Washington, DC 20240. Include the number 1076-AF14 on the envelope. Please note, email or [www.regulations.gov](http://www.regulations.gov) are the preferred methods for submitting comments; there is no need to submit a hard copy if you have submitted the comments through either of these electronic methods.

Comments on the Paperwork Reduction Act information collections contained in this rule are separate from comments on the substance of the rule. Submit comments on the information collection requirements in this rule to the Desk Officer for the Department of the Interior by e-mail at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or by facsimile at (202) 395-5806. Please also send a copy of your comments to [comments@bia.gov](mailto:comments@bia.gov).

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Vicki Forrest, Deputy Director for School Operations, Bureau of Indian Education, (202) 208-6123.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Summary of Proposed Rule

- III. Tribal Consultation
- IV. Procedural Requirements
  - A. Regulatory Planning and Review (E.O. 12866)
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  - E. Takings (E.O. 12630)
  - F. Federalism (E.O. 13132)
  - G. Civil Justice Reform (E.O. 12988)
  - H. Consultation with Indian Tribes (E.O. 13175)
  - I. Paperwork Reduction Act
  - J. National Environmental Policy Act
  - K. Effects on the Energy Supply (E.O. 13211)
  - L. Clarity of this Regulation
  - M. Public Availability of Comments

## **I. Background**

Public Laws 112-74 and 113-235 authorize the Director of BIE, or the Director's designee, to enter into agreements with public and private persons and entities allowing them to lease the land or facilities of a Bureau-operated school in exchange for consideration (in the form of funds) that benefits the school. The head of the school is to determine the manner in which the consideration will be used to benefit the school, as long as they are for school purposes otherwise authorized by law. Congress provided that any funds under this section will not affect or diminish appropriations for the operation and maintenance of Bureau-operated schools, and that no funds will be withheld from distribution to the budget of a school due to receipt of such funds.

These public laws also allow personnel of Bureau-operated schools to participate in fundraising activity for the benefit of a Bureau-operated school in their official capacity, as part of their official duties.

To carry out these public law provisions, the Acts require the Secretary of the Interior to promulgate regulations. The Acts provide that the regulations must include standards for the

appropriate use of Bureau-operated school lands and facilities by third parties under a rental or lease agreement; provisions for the establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a school; accountability standards to ensure ethical conduct; and provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use.

## **II. Summary of Proposed Rule**

This rule would establish a new Code of Federal Regulations (CFR) part to implement the leasing and fundraising authority that Congress granted to BIA under Public Laws 112-74 and 113-235. The leasing provisions of this rule would apply only to facilities and land operated by the BIE. This proposed rule would not apply to public schools, Public Law 100-297 Tribally controlled grant schools, or Public Law 93-638 contract schools. This rule would implement statutory leasing authority specific to leasing of Bureau-operated facilities and land and be separate from the general statutory authority for leasing. To obtain approval of a lease of a Bureau-operated facility or land, one would need to comply with this new regulation, rather than the more generally applicable regulations at 25 CFR part 162. We note that nothing in this rule affects 25 CFR 31.2, which allows for use of Bureau-operated school facilities or land for community activities and adult education activities upon approval by the superintendent or officer-in-charge, where no consideration is received in exchange for the use of the facilities. The fundraising provisions of this proposed rule would apply only to employees of schools operated by the BIE.

Subpart A of the proposed rule would set forth the purpose, definitions, and other general provisions applicable to both leasing and fundraising.

Subpart B would establish the mechanisms and standards by which the Bureau may lease Bureau-operated school facilities and land to third parties. The proposed rule allows only the BIE Director or his or her designee to enter into leases and sets forth the standards the BIE Director (or designee) will use to determine whether to enter into a lease, including that the lease provides a net financial benefit to the school, that it meets certain standards (e.g., complies with the mission of the school, conforms to principles of good order and discipline), and ensures the lease does not compromise the safety and security of students and staff or damage facilities. This subpart also establishes what provisions a lease must include, what actions are necessary if permanent improvements are to be constructed under the lease, and how the Bureau will ensure compliance with the lease. This subpart provides that the Bureau may only accept funds (as opposed to in-kind consideration) as consideration for a lease and may only use the funds for school purposes. It establishes how the Director will determine what amount is proper for lease consideration, and establishes the mechanics for lessees to pay consideration and how the Bureau will process the funds. Bureau-operated school personnel would be required to report quarterly on any active leases to the Director and others, including an accounting of all expenditures and supporting documentation showing expenditures were made for school purposes.

Subpart C of the proposed rule addresses fundraising activities by Bureau personnel on behalf of Bureau-operated schools. (Nothing in this proposed rule affects fundraising activities by students.) This subpart allows authorized personnel to spend a reasonable portion of his or her official duties fundraising, and allows unlimited fundraising in a personal capacity when not on duty. This subpart limits the types of fundraising an employee may conduct to ensure fundraising maintains the school's integrity, the Bureau's impartiality, and public confidence in the school. Certain approvals would be required before personnel may accept a donation on

behalf of a school, and each Bureau-operated school that has received donations would be required to report quarterly to the Director and others, including an accounting of all expenditures and supporting documentation showing expenditures were made for school purposes.

### **III. Tribal Consultation**

The Department is hosting a listening session on the proposed rule at 3 p.m. (local time) on Monday, June 27, 2016 in Spokane, Washington, in conjunction with the National Congress of American Indians mid-year conference.

The Department will also be hosting the following consultation sessions on this proposed rule:

<b>Date</b>	<b>Time</b>	<b>Location</b>
Monday, July 25, 2016	2 PM ET – 4 PM ET	Teleconference: Call-In Number (877) 924-1752; passcode 1484699
Friday, July 29, 2016	2 PM ET – 4 PM ET	Teleconference: Call-In Number (877) 324-8525; passcode 7359354

### **IV. Procedural Requirements**

#### **A. Regulatory Planning and Review (E.O. 12866)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are

relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### **B. Regulatory Flexibility Act**

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It does not change current funding requirements and any economic effects on small entities would be fees charged for the use of the facilities, which would not have a significant economic effect on them. Small entities would rent the facilities only if the fees charged are reasonable.

### **C. Small Business Regulatory Enforcement Fairness Act**

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

### **D. Unfunded Mandates Reform Act**

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The proposed rule does

not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

**E. Takings (E.O. 12630)**

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

**F. Federalism (E.O. 13132)**

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

**G. Civil Justice Reform (E.O. 12988)**

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**H. Consultation with Indian Tribes (E.O. 13175)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes



that will result from this rulemaking. The Department acknowledges that Tribes with children attending Bureau-operated schools have an interest in this proposed rule because it provides for consideration for the leasing of Bureau-operated schools and fundraising standards for school employees. As such, the Department engaged Tribal government representatives by distributing a letter, dated June 19, 2014, with a copy of the draft rule and requesting comment on the draft rule by July 31, 2014. The Department received no comments on the draft rule, but has scheduled consultation sessions with Tribal officials on this proposed rule. (See Section III of this preamble for details on the dates and locations of the Tribal consultation sessions).

### **I. Paperwork Reduction Act**

This proposed rule contains information collections that require approval by OMB. The Department is seeking approval of a new information collection and a revision to an existing regulation, as follows.

*OMB Control Number:* 1076–NEW.

*Title:* Use of Bureau-Operated Schools by Third Parties.

*Brief Description of Collection:* The Bureau of Indian Education (BIE) is proposing to establish standards for the appropriate use of lands and facilities by third parties. These standards address the following: the execution of lease agreements; the establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a Bureau-operated school; the assurance of ethical conduct; and monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use. The paperwork burden associated with the proposed rule results from lease provisions; lease violations; and assignments, subleases, or mortgages of leases.

*Type of Review:* New collection.

*Respondents:* Individuals and Private Sector.

*Number of Respondents:* 24.

*Number of Responses:* 24.

*Frequency of Response:* Annually.

*Estimated Time per Response:* One to three hours.

*Estimated Total Annual Hour Burden:* 68 hours.

*Estimated Total Annual Non-Hour Cost Burden:* \$0.

CFR Cite	Description	No. Respondents	Annual Responses	Burden Hours per Response	Total Annual Burden Hours
48.105 48.106	Provisions of leases and the construction of permanent improvements under the lease (businesses)	17	17	3	51
48.105 48.106	Provisions of leases and the construction of permanent improvements under the lease (individuals)	3	3	3	9
48.116	Violations of leases (businesses)	1	1	1	1
48.116	Violations of leases (individuals)	1	1	1	1
48.118	Assignments, subleases, and mortgages of leases (businesses)	1	1	3	3
48.118	Assignments, subleases, and mortgages of leases (individuals)	1	1	3	3
	<b>Total</b>	<b>24</b>	<b>24</b>		<b>68</b>

*OMB Control Number:* 1090-0009.

*Title:* Donor Certification Form.

*Brief Description of Collection:* This information will provide Department staff with the basis for beginning the evaluation as to whether the Department will accept the proposed donation. The authorized employee will receive the donor certification form in advance of

accepting the proposed donation. The employee will then review the totality of circumstances surrounding the proposed donation to determine whether the Department can accept the donation and maintain its integrity, impartiality, and public confidence. We expect to receive 25 responses to this information collection annually. The burden associated with this information collection is already reflected in the approval of OMB Control Number 1090-0009.

#### **J. National Environmental Policy Act**

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the environmental effects of this proposed rule are too speculative to lend themselves to meaningful analysis and will later be subject to the NEPA process, unless covered by a categorical exclusion. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### **K. Effects on the Energy Supply (E.O. 13211)**

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### **L. Clarity of this Regulation**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- a. Be logically organized;
- b. Use the active voice to address readers directly;
- c. Use clear language rather than jargon;

- d. Be divided into short sections and sentences; and
- e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "**ADDRESSES**" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

#### **M. Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### **List of Subjects in 25 CFR Part 48**

Educational facilities, Indians-education.

For the reasons given in the preamble, the Department of the Interior proposes to amend 25 CFR chapter I, subchapter E, to add part 48 to read as follows:

### **PART 48 – LEASES COVERING BUREAU-OPERATED SCHOOLS AND FUNDRAISING ACTIVITIES AT BUREAU-OPERATED SCHOOLS**

#### **Subpart A – General Provisions**

- |      |                                   |
|------|-----------------------------------|
| Sec. |                                   |
| 48.1 | What is the purpose of this part? |
| 48.2 | What is the scope of this part?   |
| 48.3 | What terms do I need to know?     |

- 48.4 What is considered unethical conduct in the context of this part?
- 48.5 What accounting standards will the Bureau use in monitoring the receipt, holding, and use of funds?
- 48.6 How long will the funds be available?
- 48.7 How does the Paperwork Reduction Act affect this part?

### **Subpart B – Leasing of Bureau-operated Facilities**

- 48.101 Who may enter into a lease on behalf of a Bureau-operated school?
- 48.102 With whom may the Director enter into a lease?
- 48.103 What facilities may be leased?
- 48.104 What standards will the Director use in determining whether to enter into a lease?
- 48.105 What provisions must a lease contain?
- 48.106 May a lessee construct permanent improvements under a lease?
- 48.107 What consideration may a Bureau-operated school accept in exchange for a lease?
- 48.108 How will the Bureau determine appropriate consideration for a lease?
- 48.109 Who may use the funds?
- 48.110 For what purposes may a Bureau-operated school use the funds?
- 48.111 How does a lessee pay the Bureau-operated school under a lease?
- 48.112 How are lease payments processed?
- 48.113 Will late payment charges or special fees apply to delinquent lease payments?
- 48.114 How will the Bureau monitor the results achieved by the use of funds received from leases?
- 48.115 Who may investigate compliance with a lease?
- 48.116 What will the Bureau do about a violation of a lease?
- 48.117 What will the Bureau do if a lessee does not cure a lease violation on time?
- 48.118 May a lease be assigned, subleased, or mortgaged?

### **Subpart C – Fundraising Activities**

- 48.201 To whom does this subpart apply?
- 48.202 May employees fundraise?
- 48.203 How much time may employees spend fundraising?
- 48.204 For what school purposes may employees fundraise?
- 48.205 What are the limitations on fundraising?
- 48.206 What approvals are necessary to accept a donation?
- 48.207 How may the donations solicited under this subpart be used?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9; Pub. L. 112-74; Pub. L. 113-235.

### **Subpart A – General Provisions**

#### **§ 48.1 What is the purpose of this part?**

- (a) The purpose of this part is to set forth processes and procedures to:

(1) Implement authorization for the Director to lease or rent Bureau-operated school facilities in exchange for consideration in the form of funds;

(2) Establish mechanisms and standards for leasing or renting of Bureau-operated facilities, and management and use of the funds received as consideration;

(3) Describe allowable fundraising activities by the employees of Bureau-operated schools;

(4) Set accountability standards to ensure ethical conduct; and

(5) Establish provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use.

(b) Nothing in this part affects:

(1) 25 CFR 31.2, allowing for use of Federal Indian school facilities for community activities and adult education activities upon approval by the superintendent or officer-in-charge, where no consideration is received in exchange for the use of the facilities;

(2) 26 CFR 31.7 and 36.43(g), establishing guidelines for student fundraising; or

(3) The implementing regulations for the Federal Employees Quarters Facilities Act, 5 U.S.C. 5911, at 41 CFR part 114-51 and policies at Departmental Manual part 400, chapter 3; or

(4) The use of Bureau-operated school facilities or lands by other Federal agencies so long as the use is memorialized in a written agreement between the BIE and the other Federal agency.

#### **§ 48.2 What is the scope of this part?**

The leasing provisions of this part apply only to facilities operated by the BIE and the fundraising provisions of this part apply only to employees of schools operated by the BIE. This

part does not apply to public schools, Public Law 100-297 Tribally controlled schools, or Public Law 93-638 contract or grant schools.

### **§ 48.3 What terms do I need to know?**

Assistant Secretary means the Assistant Secretary – Indian Affairs or his or her designee.

Bureau means the Bureau of Indian Education.

Bureau official means the official in charge of administrative functions for the Bureau under this part.

Bureau-operated school means a day or boarding school, or a dormitory for students attending a school other than a Bureau school, an institution of higher learning and associated facilities operated by the Bureau. This term does not include public schools, Public Law 100-297 Tribally controlled schools, or Public Law 93-638 contract or grant schools.

Construction means construction of new facilities, modification, or alteration of existing grounds or building structures.

Designee means a supervisory contracting specialist the Director designates to act on his or her behalf.

Director means the Director, Bureau of Indian Education.

Department means the Department of the Interior.

Donation means something of value (e.g., funds, land, personal property) received from a non-Federal source without consideration or an exchange of value.

Employee means an employee of the Bureau working with or at a Bureau-operated school.

Facilities means land or facilities authorized for use by a Bureau-operated school.

Funds means money.

Fundraising means requesting donations, selling items, or providing a service, activity, or event to raise funds, except that writing a grant proposal to secure resources to support school purposes is not fundraising. Fundraising does not include requests for donated supplies, materials, in-kind services, or funds (e.g., fees for school activities) that schools traditionally require or request parents and guardians of students to provide.

Head of the School means the Principal, President, School Supervisor, Residential Life Director, Superintendent of the School, or equivalent head of a Bureau-operated school where facilities are being leased under this Part.

Lease means a written contract or rental agreement executed in accordance with this part, granting the possession and use of facilities at a Bureau-operated school to a private or public person or entity in return for funds.

Private person or entity means an individual who is not acting on behalf of a public person or entity and includes, but is not limited to, private companies, nonprofit organizations and any other entity not included in the definition of public person or entity.

Public person or entity means a State, local, Federal or Tribal governmental agency or unit thereof.

School purposes means lawful activities and purchases for the benefit of students and school operations including, but not limited to: academic, residential, and extra-curricular programs during or outside of the normal school day and year; books, supplies or equipment for school use; building construction, maintenance and/or operations; landscape construction, modifications, or maintenance on the school grounds.

#### **§ 48.4 What is considered unethical conduct in the context of this part?**



Violation or the appearance of violation of any applicable ethics statute or regulation by an employee may be considered unethical conduct.

**§ 48.5 What accounting standards will the Bureau use in monitoring the receipt, holding, and use of funds?**

The Bureau will use applicable Federal financial accounting rules in monitoring the receipt, holding, and use of funds.

**§ 48.6 How long will the funds be available?**

Funds generated under these regulations remain available to the recipient school until expended, notwithstanding 31 U.S.C. 3302.

**§ 48.7 How does the Paperwork Reduction Act affect this part?**

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB Control Number 1076-NEW and OMB Control Number 1090-0009. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

**Subpart B –Leasing of Bureau-operated Facilities**

**§ 48.101 Who may enter into a lease on behalf of a Bureau-operated school?**

Only the Director or a designee may enter into leases.

**§ 48.102 With whom may the Director enter into a lease?**

The Director or designee may lease to public or private persons or entities who meet the requirements of this part that are applicable to leasing activities.

**§ 48.103 What facilities may be leased?**

Any portion of a Bureau-operated school facility may be leased as long as the lease does not interfere with the normal operations of the Bureau-operated school, student body, or staff, and otherwise meets applicable requirements of this part.

**§ 48.104 What standards will the Director use in determining whether to enter into a lease?**

(a) The Director or designee will make the final decision regarding approval of a proposed lease. The Director or designee must ensure that the lease provides a net financial benefit to the school and that the Head of the School has certified, after consultation with the school board or board of regents, that the lease meets the standards in paragraph (b) of this section.

(b) The lease must:

- (1) Comply with the mission of the school;
- (2) Conform to principles of good order and discipline;
- (3) Not interfere with existing or planned school activities or programs;
- (4) Not interfere with school board staff and/or community access to the school;
- (5) Not allow contact or access to students inconsistent with applicable law;
- (6) Not result in any Bureau commitments after the lease expires; and
- (7) Not compromise the safety and security of students and staff or damage facilities.

(c) The Director's or designee's decision on a proposed lease is discretionary and is not subject to review or appeal under part 2 of this chapter or otherwise.

**§ 48.105 What provisions must a lease contain?**

(a) All leases of Bureau-operated facilities must identify:

- (1) The facility, or portion thereof, being leased;

- (2) The purpose of the lease and authorized uses of the leased facility;
  - (3) The parties to the lease;
  - (4) The term of the lease, and any renewal term, if applicable;
  - (5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements, and meeting due diligence requirements under § 48.106;
  - (6) Payment requirements and late payment charges, including interest;
  - (7) That lessee will maintain insurance sufficient to cover negligence or intentional misconduct occurring on the leasehold; and
  - (8) Any bonding requirements, as required in the discretion of the Director. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.
- (b) All leases of Bureau-operated facilities must include the following provisions:
- (1) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;
  - (2) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;
  - (3) The Bureau has the right, at any reasonable time during the term of the lease and upon reasonable notice to enter the leased premises for inspection and to ensure compliance; and
  - (4) The Bureau may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication.

(c) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

(1) The lessee holds the United States harmless from any loss, liability, or damages resulting from the lessee's, its invitees', and licensees' use or occupation of the leased facility; and

(2) The lessee indemnifies the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct.

**§ 48.106 May a lessee construct permanent improvements under a lease?**

(a) The lessee may construct permanent improvements under a lease of a Bureau-operated facility only if the lease contains the following provisions.

(1) A description of the type and location of any permanent improvements to be constructed by the lessee and a general schedule for construction of the permanent improvements, including dates for commencement and completion of construction;

(2) Specification of who owns the permanent improvements the lessee constructs during the lease term and specifies whether each specific permanent improvement the lessee constructs will:

(i) Remain on the leased premises, upon the expiration, cancellation, or termination of the lease, in a condition satisfactory to the Director, and become the property of the Bureau-operated school;

(ii) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or

(iii) Be disposed of by other specified means.

(3) Due diligence requirements that require the lessee to complete construction of any permanent improvements within the schedule specified in the lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties.

(i) If construction does not occur, or is not expected to be completed, within the time period specified in the lease, the lessee must provide the Director with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(ii) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease.

(b) The lessee must prepare the required information and analyses, including information to facilitate the Bureau's analysis under applicable environmental and cultural resource requirements.

(c) The Bureau may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense before or after expiration, termination, or cancellation of the lease. The Bureau may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

(d) The due diligence requirements of this section do not apply to leases for religious, educational, recreational, cultural, or other public purposes.

**§ 48.107 What consideration may a Bureau-operated school accept in exchange for a lease?**

A Bureau-operated school may accept only funds as consideration for a lease.

**§ 48.108 How will the Bureau determine appropriate consideration for a lease?**

The Bureau will determine what consideration is appropriate for a lease by considering, at a minimum, the following factors:

- (a) The indirect and direct costs of the lease; and
- (b) Whether there will be a net financial benefit to the school.

**§ 48.109 Who may use the funds?**

The Bureau-operated school may use funds, including late payment charges, received as compensation for leasing that school's facilities. The funds must first be sent to the Bureau official as provided for in the subject lease for processing in accordance with § 48.112.

**§ 48.110 For what purposes may a Bureau-operated school use the funds?**

The Bureau-operated school must first use the funds to pay for indirect and direct costs of the lease. The Bureau-operated school must use the remaining funds for any school purposes.

**§ 48.111 How does a lessee pay the Bureau-operated school under a lease?**

A lessee must pay consideration and any late payment charges due under the lease to the Bureau-operated school by certified check, money order, or electronic funds transfer made out to the Bureau and containing identifying information as provided for in the lease.

**§ 48.112 How are lease payments processed?**

The Bureau official must deposit funds received as lease consideration or late payment charge into the Treasury account set up to receive the proceeds from the Bureau-operated school's lease.

**§ 48.113 Will late payment charges or special fees apply to delinquent lease payments?**

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) We may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if rent is not paid in the time and manner required, in addition to late payment charges that must be paid under the terms of the lease:

<b>The lessee will pay...</b>	<b>For...</b>
(1) \$50.00.....	Any dishonored check.
(2) \$15.00.....	Processing of each notice or demand letter.
(3) 18 percent of balance due.....	Treasury processing following referral for collection of delinquent debt.

**§ 48.114 How will the Bureau monitor the results achieved by the use of funds received from leases?**

The Head of the School for each Bureau-operated school that has active leases under this part must submit a quarterly report to the Director, the designee, and the Office of Facilities Management and Construction. The report must contain the following information:

- (a) A list of leases and the facilities covered by each lease;
- (b) An accounting of receipts from each lease;
- (c) An accounting of all expenditures and the supporting documentation showing that expenditures were made for school purposes;
- (d) A report of the benefits provided by the leasing program as a whole;
- (e) A certification that the terms of each lease were met or, if the terms of a lease were not met, the actions taken as a result of the noncompliance; and
- (f) Any unexpected expenses incurred.

**§ 48.115 Who may investigate compliance with a lease?**

The Head of the School or his designee or any Bureau official may enter the leased facility at any reasonable time, upon reasonable notice, and consistent with any notice requirements under the lease to determine if the lessee is in compliance with the requirements of the lease.

**§ 48.116 What will the Bureau do about a violation of a lease?**

(a) If the Bureau determines there has been a violation of the conditions of a lease, it will promptly send the lessee and any surety and mortgagee a notice of violation, by certified mail, return receipt requested.

(1) The notice of violation will advise the lessee that, within 10 business days of the receipt of a notice of violation, the lessee must:

- (i) Cure the violation and notify the Bureau in writing that the violation has been cured;
- (ii) Dispute the determination that a violation has occurred; or
- (iii) Request additional time to cure the violation.

(2) The notice of violation may order the lessee to cease operations under the lease.

(b) A lessee's failure to pay compensation in the time and manner required by the lease is a violation of the lease, and the Bureau will issue a notice of violation in accordance with this section requiring the lessee to provide adequate proof of payment.

(c) The lessee and its sureties will continue to be responsible for the obligations in the lease until the lease expires, or is terminated or cancelled.

**§ 48.117 What will the Bureau do if a lessee does not cure a lease violation on time?**

(a) If the lessee does not cure a violation of a lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Bureau will take one or more of the following actions:



(1) Cancel the lease;

(2) Invoke other remedies available under the lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or

(3) Grant the lessee additional time in which to cure the violation.

(b) The Bureau may take action to recover unpaid compensation and any associated late payment charges, and does not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation. The Bureau may still take action to recover any unpaid compensation if it cancels the lease.

(c) If the Bureau decides to cancel the lease, it will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of our decision. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;

(3) Notify the lessee of the lessee's right to appeal under part 2 of this chapter, including the possibility that the official to whom the appeal is made may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Order the lessee to take any other action the Bureau deems necessary to protect the facility.

(d) The Bureau may invoke any other remedies available to us under the lease, including collecting on any available performance bond.

**§ 48.118 May a lease be assigned, subleased, or mortgaged?**

A lessee may assign, sublease, or mortgage a lease only with the approval of the Director.

**Subpart C – Fundraising Activities**

**§ 48.201 To whom does this subpart apply?**

This subpart applies to employees under the direction and supervision of the Director that fundraise for a Bureau-operated school. This subpart does not apply to students who fundraise.

**§ 48.202 May employees fundraise?**

(a) Employees may fundraise for school purposes as part of their official duties using their official title, position and authority, or in a personal capacity, so long as:

(1) The Bureau official approves the fundraising in advance and certifies that it complies with this subpart; and

(2) The employees ensure the fundraising conforms to the requirements of this subpart.

(b) Nothing in this part allows participation in political or other activities prohibited by law.

**§ 48.203 How much time may employees spend fundraising?**

(a) Each authorized employee may spend no more than a reasonable portion of his or her official duties as an employee in any calendar year fundraising.

(b) There is no limit to the time employees may spend fundraising in a personal capacity when not on duty, as long as other requirements of this subpart are met.

**§ 48.204 For what school purposes may employees fundraise?**

Employees may fundraise for school purposes as defined in § 48.3.

**§ 48.205 What are the limitations on fundraising?**

- (a) Fundraising may not include any gaming or gambling activity.
- (b) Fundraising may not violate, or create an appearance of violating, any applicable ethical statutes or regulations.
- (c) Fundraising and donations must maintain the integrity of the Bureau-operated school programs and operations, including but not limited to the following considerations:
  - (1) The donation may not, and may not appear, to be an attempt to influence the exercise of any regulatory or other authority of the Bureau;
  - (2) The donation may not require commitment of current or future funding that is not planned or available;
  - (3) The donation must be consistent with, and may not otherwise circumvent, law, regulation, or policy;
  - (4) The Bureau-operated school must be able to properly utilize or manage any donated real or personal property within policy, programmatic, and management goals;
  - (5) Any conditions on the donation must be consistent with authorized school purposes and any relevant policy or planning documents;
  - (6) The donation may not be used by the donor to state or imply endorsement by the Bureau or Bureau-operated school of the donor or the donor's products or services;
  - (7) The donation, if it consists of personnel or funding to hire personnel, must be structured such that the donated or funded personnel do not inappropriately influence any Bureau regulatory action or other significant decision.

(d) The fundraising and donation must maintain the impartiality, and appearance of impartiality, of the Bureau, Bureau-operated school, and its employees, including but not limited to the following considerations:

(1) The proposed donation may be only in an amount that would not influence or appear to influence any pending Bureau decision or action involving the donor's interests;

(2) There may be no actual or implied commitment to take an action favorable to the donor in exchange for the donation;

(3) The donor may not obtain or appear to obtain special treatment dealing with the Bureau or Bureau-operated school.

(e) The fundraising and donation must maintain public confidence in the Bureau and Bureau-operated school, its programs, and its personnel, including but not limited to the following considerations:

(1) The fundraising and acceptance of the donation would not likely result in public controversy;

(2) Any conditions on donations must be consistent with the Bureau and Bureau-operated school's policy, goals, and programs; and

(3) The fundraising and donation may not involve any inappropriate goods or services.

(f) Participation in fundraising is voluntary. No student, community member, or organization shall be forced, coerced or otherwise unduly pressured to participate in fundraising. No reprimand, condemnation, nor criticism shall be made of, nor any retaliatory action taken against, any student, community member, or organization for failure to participate or succeed in fundraising.

**§ 48.206 What approvals are necessary to accept a donation?**

(a) Prior to accepting a donation, the Bureau official must approve the acceptance and certify that it complies with this subpart, including the considerations of § 48.205, Departmental policy, and any applicable statute or regulation.

(b) Prior to accepting a donation that consists of volunteer services, the Bureau official must approve the acceptance and certify that it complies with this subpart, including the considerations of § 48.205, 25 CFR 38.14, Departmental policy, and any applicable statute or regulation.

**§ 48.207 How may donations solicited under this subpart be used?**

(a) The Bureau official must deposit all income from the fundraising into the Treasury account set up to receive the proceeds from the fundraising activities authorized under this part. The Bureau-operated school must first use the funds to pay documented costs of the fundraising activity and must use the remaining funds in accordance with paragraph (b) of this section.

(b) Funds and in-kind donations solicited under this subpart may be used for the school purposes identified in the solicitation. If the solicitation did not identify the school purposes, the funds and in-kind donations may be used for any school purposes defined in § 48.3.

(c) Each Bureau-operated school that has received donations must submit a quarterly report to the Director containing the following information:

- (1) A list of donors, donation amounts, and estimated values of donated goods and services;
- (2) An accounting of all costs of fundraising activities;
- (3) Supporting documentation showing the donations were used for school purposes; and
- (4) A report of the results achieved by use of donations.

Dated: June 15, 2016.

**Lawrence S. Roberts,**

*Acting Assistant Secretary – Indian Affairs.*

[FR Doc. 2016-14665 Filed: 6/20/2016 8:45 am; Publication Date: 6/21/2016]